

ALICE HAYS

IBLA 78-329

Decided August 23, 1978

Appeal from decisions of the Utah State Office, rejecting noncompetitive oil and gas lease offers U-39771 and U-39781.

Affirmed.

1. Act of May 21, 1930 -- Mineral Leasing Act: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Rights-of-Way: Generally

Oil and gas under a reservoir right-of-way may not be leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 et seq. (1970), but may only be leased to the holder of the right-of-way, his assignee, or to adjacent owners or their lessees in accordance with the Act of May 21, 1930, 30 U.S.C. § 301 (1970); therefore, offers filed under the Mineral Leasing Act for such lands are properly rejected.

2. Oil and Gas Leases: Applications: 640-acre Limitation

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

APPEARANCES: Alice Hays, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Alice Hays appeals the March 17, 1978, decisions of the Utah State Office which rejected her noncompetitive oil and gas lease offers, U-39771 and U-39781, for tracts in Box Elder County, Utah. Both offers were rejected due to the location of the lands within a reservoir right-of-way. In addition, U-39781 was held violative of the 640-acre rule.

The decision noted that these tracts are available for leasing only under the Act of May 21, 1930, 30 U.S.C. § 301 et seq.

Appellant submitted the oil and gas lease offers on the standard forms for lands covered by the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970). Part of U-39781 and all of U-39771 are encompassed by a reservoir right-of-way, U-8474 issued under the Act of February 15, 1901, 43 U.S.C. § 959 (February 15, 1901). 1/ The portion of U-39781 not covered by the reservoir right-of-way covers less than 640 acres and is adjacent to lands subject to oil and gas lease application U-39792.

In her statement of reasons, appellant objects to the existing right-of-way. She maintains that the current holder of the right-of-way possesses the right to the oil and gas beneath the lands without paying the Federal Government for it. She claims that because a large area is involved in the U-8474 right-of-way grant, it thwarts the multiple use mandate of the Bureau of Land Management (BLM). She would prefer to see the grantee issued a surface use permit, so that oil and gas leasing would not be prevented in these areas, and makes other statements concerning the right-of-way.

[1] Lands under a reservoir right-of-way cannot be leased under the Mineral Leasing Act of February 25, 1920. E. A. Wight, A-24101 (November 5, 1945). Instead, such lands are only available for leasing under the Act of May 21, 1930. Republic Oil and Mining Co., 35 IBLA 212 (1978). By the 1930 Act, Congress restricted oil and gas leasing under a right-of-way primarily to the holder of that right-of-way or his assignee. 30 U.S.C. § 301. Prior to any lease award, however, the Act declares that adjacent owners or lessees shall be notified and given a chance to bid for the lease. 30 U.S.C. § 303. No other parties may lease under the right-of-way. 30 U.S.C. § 301; W. A. Sheets, A-24394 (September 3, 1946). Therefore, all of tract U-39771 and part of tract U-39781 are unavailable for leasing under the Mineral Leasing Act so long as the right-of-way remains of record. Republic Oil and Mining Co., supra.

The notation of the right-of-way on the official records precludes issuance of an oil and gas lease for lands covered thereby except under the authority of the Act of May 21, 1930. Id. Therefore, regardless of appellant's objections to the right-of-way, we must affirm the rejection of these offers filed under the Mineral Leasing Act. We do not discuss further or decide appellant's

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1/ That Act has been repealed by the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2793. However, FLPMA did not terminate existing rights-of-way. Section 701(a), 90 Stat. 2786.

contentions concerning the right-of-way since they are irrelevant to the decisive issue on appeal, i.e., the correctness of rejecting these offers. The appropriate vehicle for appellant to raise issues concerning the existence of the right-of-way is by way of a protest to the State Office, not by an appeal from rejection of her lease offers.

[2] Part of U-39781 is not encompassed by the right-of-way. Because this portion of U-89781 does not exceed 640 acres and because adjacent land, though under application, is technically available for leasing, a lease cannot issue for this portion. 43 CFR 3110.1-3; Janis M. Koslosky, 66 I.D. 384 (1959).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joseph W. Goss  
Administrative Judge

